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OFFICE OF PETITIONS

In re Application of :
Becker et al. : DECISION ON APPLICATION
Application No. 09/902,933 : FOR
Filed: July 10, 2001 : PATENT TERM ADJUSTMENT
Title: METHOD AND APPARATUS :
FOR PROGRAMMABLE FLUIDIC :
PROCESSING :
: :
:

This is a decision on the "APPLICATION FOR PATENT TERM ADJUSTMENT UNDER 37 C.F.R. §§1.705(b)" filed March 11, 2005. Applicants request that the initial determination of patent term adjustment under 35 U.S.C. 154(b) be corrected from one hundred forty (140) days to four hundred twenty-one (421) days.

The application for patent term adjustment is **GRANTED**.

The Office has updated the PAIR screen to reflect that the correct Patent Term Adjustment (PTA) determination at the time of the mailing of the Notice of Allowance is four hundred twenty-one (421) days. A copy of the updated PAIR screen, showing the correct determination, is enclosed.

On January 25, 2005, the Office mailed the Determination of Patent Term Adjustment under 35 U.S.C. 154(b) in the above-identified application. The Notice stated that the patent term adjustment (PTA) to date is 140 days. On March 11, 2005, applicants timely¹ submitted an application for patent term adjustment (with required fee), asserting that the correct number of days of PTA at the time of the mailing of the Notice of Allowance is 421 days. Applicants dispute the reduction of

¹ PALM records indicate that the Issue Fee was received on April 25, 2005.

293 days for applicant delay in responding to a non-final Office action. Applicants contend that the Office action originally mailed November 17, 2003 was never received. The Office action was re-mailed on August 24, 2004 and the period for response restarted. Accordingly, applicants contend that any reduction should be measured from the date of re-mailing of the Office. As such, their response received December 6, 2004 would lead to a 12 day, not a 293-day reduction. In support thereof, applicants submit a copy of their return postcard, evidencing receipt of the response on December 6, 2004.

The record reveals that the patent issuing from the application is subject to a terminal disclaimer.

The record has been reviewed and it is concluded that applicants are correct. Their delay in responding to the Office action should have been calculated based on the date of re-mailing of the Office action, August 24, 2004. Pursuant to § 1.704(b), the correct reduction is 12 days, the number of days, beginning on the day after the date that is three months after the date of mailing of the Office action that actually notified applicant of the rejection, November 25, 2004, and ending on the date the reply was filed, December 6, 2004.

In view thereof, the correct determination of patent term adjustment at the time of the mailing of the Notice of Allowance is FOUR HUNDRED TWENTY-ONE (421) days (433 - 12).

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application file is being forwarded to the Office of Patent Publication for timely issuance of the patent.

Telephone inquiries specific to this matter should be directed to Nancy Johnson, Senior Petitions Attorney, at (571) 272-3219.

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